

5

108/

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR (C.G.)

Writ Petition No. 1243 of 2001

PETITIONER

KODAI PRASAD S/O BHULAI
AGED 51 YEARS, OCCUPATION
PRODUCTION -CUM- SAFETY
ASSISTANT (P.S.A.)
PALKIMARA, COLLIERY,
P.O. - KHONGA PANI
DISTT. - KOREA (C.G.)

VERSUS

RESPONDENTS

1. SOUTH EASTERN COALFIELDS LTD.
(A SUBSIDIARY COMPANY OF COAL
INDIA)
- THROUGH ITS CHAIRMAN CUM
MANAGING DIRECTOR, SEEPAT ROAD,
BILASPUR.
2. THE CHIEF GENERAL MANAGER,
SOUTH EASTERN COALFIELDS LTD.
HASDEO AREA, SOUTH
JHAGRAKHAND COLLIERY, KOREA
(C.G.).
3. THE SUB AREA MANAGER/AGENT
SOUTH EASTERN COALFIELDS LTD.
SOUTH JHAGRAKHAND COLLIERY,
KHONGAPANI, KOREA (C.G.)
4. SUPERINTENDENT OF MINES/
MANAGER SOUTH EASTERN
COALFIELDS LTD. PALKIMARA
COLLIERY, P.O- KHONGAPANI, DISTT.
KOREA (C.G.)

P. R. No. 1302/01
Presented by Shri K.B. Sharma
dated 24.2.2001

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA FOR THE ISSUANCE OF WRIT IN THE NATURE OF
MANDAMUS, CERTIORARI ETC. OR ORDERS IN THE LIKE
NATURE.

72

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1243 of 2001

Kodai Prasad

- Versus -

South Eastern Coalfields Limited and three others

POST FOR ORDER ON 15th MARCH, 2004

Sd/-
L.C. Bhadoo
Judge

(73)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1243 of 2001

Kodai Prasad

- Versus -

South Eastern Coalfields Limited and three others

Present: -

Mr. Manoj Paranjpe, Advocate:

For the petitioner

Mr. R.S. Jaiswal, Advocate:

For the respondents

Before Hon'ble Mr. L.C. Bhadoo, J.

ORDER

(Passed on 15th March, 2004)

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India, challenging the order dated 26.06.2001 passed by respondent No.4, whereby the petitioner was forced to retire on the last date of July, 2001.
2. The petitioner's case is that he was appointed as Loader-cum-Dresser in the year 1972 at North Jhagrakhand Colliery. At the time of appointment and joining of service the petitioner was required to record the details and date of birth in Form-B register which is maintained by the employer as the same is mandatory under Section 48 of the Mines Act, 1952 and Rule 77 of the Mines Rules, 1955. Therefore, the date of birth of the petitioner was recorded as 01.10.1949 and the same was accepted by the respondents. The petitioner continued in service in the mines and in the year 1979 he passed the examination of Mining Sirdar and was promoted and presently working at the post of Production-cum-Safety Assistant. The petitioner during the course of his service had to complete and submit his service excerpts in the year 1987, and in that also the petitioner stated his correct date of birth as 01.10.1949. Further, on 16.05.2001, to the utter surprise of the petitioner, respondent No.4 gave a letter to the petitioner seeking clarification that there is a difference of date of birth of the petitioner in Form-B register and the Mining Sirdarship Certificate. So the petitioner was required to submit in writing within 24 hours about the correct date of birth which the petitioner replied and categorically

74

stated that his date of birth is 01.10.1949 and also submitted school leaving certificate as proof of his contention regarding the date of birth. Respondent No.4 arbitrarily without any further notice to the petitioner or enquiry, passed the impugned order dated 26.06.2001 stating that the petitioner will retire from service with effect from 31st July, 2001. Therefore, the impugned order be set aside and hold that the petitioner is entitled to continue till 30th September, 2009.

3. Return has been filed on behalf of the respondents in which it has been mentioned that the petitioner was appointed as Loader on 31.10.1972. Under the Coal Mines Regulations 1957, Board of Mining Examinations conducted examination and issued competency certificate for Sirdar's Certificate. The candidates who apply for appearing in the examination for obtaining the certificate has to submit the form declaring the date of birth and on that basis, proficiency certificate is issued. The date of birth mentioned in the certificate is on the basis of the information given by the applicant. The petitioner in this case, appeared for examination of Sirdarship Certificate in 1979 and qualified the same and Sirdar's Certificate (Annexure R-2) was issued by the Director, Mines Safety, Government of India, under the Mines Act, which discloses the date of birth as 02.07.1941. Though the petitioner's date of birth is 02.07.1941, he suppressed the same and did not disclose the date of birth as 02.07.1941 recorded in the said Certificate. He intentionally suppressed this in order to gain undue advantage and altered the form in service excerpts and Form-B as 01.10.1949 instead of 02.07.1941. The respondents coming to know about this fact, issued notice dated 16.05.2001 (Annexure P-4) to produce the original Mining Sirdar's Certificate and gave ample opportunity to the petitioner. The petitioner, in spite of receipt of notice, failed to submit the Mining Sirdar's Certificate and gave reply stating that his date of birth is 01.10.1949. It is denied that respondent No.4 arbitrarily passed the impugned order dated 26.06.2001 retiring the petitioner from the service on the last date of July, 2001, without any notice or enquiry. The school-leaving certificate (Annexure P-6) is not acceptable under the provisions of Implementation Instruction No.76 (II.76). The said II.76 was issued by the Joint Bipartite Committee for the Coal Industry under National Coal Wage Agreement III Implementation Instruction No.76 dated 25.04.1988 (Annexure R-3) in which procedure for determination verification of age of the employees is laid down. It is submitted that the petitioner has been retired on attaining the age of superannuation of 60 years as per the date of birth recorded in Mining Sirdar's

(75)

Certificate issued by the Government of India, under the Mining Regulations, 1957, which is an authentic document. Therefore, the writ petition be dismissed.

4. I have heard the learned counsel for the parties.
5. Learned counsel for the petitioner argued that at the time of entering into the service the petitioner's date of birth was recorded as 01.10.1949 in Form-B register which was accepted by the authorities and in the year 1987, respondent No.1 issued service excerpts in which the date of birth of the petitioner was shown as 01.10.1949. Moreover, as per the pay slip Annexure P-3, the date of birth of the petitioner was recorded as 01.10.1949 and in school leaving certificate (Annexure P-6) also, the date of birth is recorded as 01.10.1949. He further argued that Annexure R-2, the Sirdar's Certificate, in which the date of birth was recorded as 2nd July, 1941, is without basis. The respondents had not submitted the form, which was required to be filled by the petitioner and on the basis of which Annexure R-2 was issued. Therefore, the age entered in the Sirdar's Certificate cannot be made the sole basis in view of the other ample documentary evidence in favour of the petitioner.
6. On the other hand, learned counsel for the respondents submitted that as per Annexure R-1 (Form-B), the age of the petitioner as on 31st October, 1972, at the time of recruitment, was recorded as 30 years and as per the Sirdar's Certificate, the date of birth of the petitioner is 2nd July, 1941, therefore, the petitioner's contention is without force and correct date of birth is 2nd July, 1941.
7. In the light of the above arguments advanced by the respective counsel, I have perused the record. In Annexure P-2 (service excerpts), which was issued in the year 1987, the date of birth of the petitioner was recorded as 01.10.1949 and the same was signed by the Superintendent of Mines, which has not been denied by the respondents. Based on the service record of the petitioner, in the pay slip also the date of birth of the petitioner was recorded as 01.10.1949. Moreover, in the school-leaving certificate (Annexure P-6), the date of birth is recorded as 01.10.1949. It is true that in the Mining Sirdar's Certificate (Annexure R-2), the date of birth of the petitioner is recorded as 2nd July, 1941, but the respondents had not produced the basis of this document i.e. the application form since as per the scheme at the time of the examination for Sirdarship, the candidate was required to fill-up a form of

application for Sirdar's Certificate. The sample form is Annexure P-1 and based on the various entries made by the applicant, the Manager was required to certify the statements, which were made by the employee. The basis of the issuance of the Sirdar's Certificate was this document and this form of application has not been filed by the respondents. Even otherwise, if we look into the Sirdar's Certificate, initially the date of birth was typed out as 2nd July, 194 and thereafter some letter was overtyped and thereafter, again 1941 has been typed out within brackets. This itself creates doubt about the correct date of birth recorded in the Sirdar's Certificate. In order to substantiate and establish the date of birth recorded in this certificate, the respondents ought to have produced the original form which was filled-up by the applicant at the time of appearing in the examination and which was confirmed by the Manager because, that was the basis of entry of the date of birth in the Sirdar's Certificate. So, without that application form and particularly in the light of the other documents produced by the petitioner viz., Annexure P-2, excerpts of service record; Annexure P-3, pay slip; and Annexure P-6, school leaving certificate, it is not safe to rely solely on this certificate.

8. Now coming to Annexure R-1, Form-B, in which the age of the petitioner was said to be mentioned as 30 years on the date of entry into service i.e. 31st October, 1972, which bears the thumb impression of the petitioner, this is a combined form of all the employees. Even if we take it as it is, then the date of birth of the petitioner comes to 31st October, 1942. As on 31st October, 1972, the age of the petitioner has been shown as 30 years. On the basis of this also, the age mentioned in the Sirdar's Certificate becomes doubtful. Therefore, even the documents viz., Annexures R-1 and R-2 produced by the respondents are themselves contradictory in itself.
9. In the given situation, if any doubt about the age was there and there was discrepancy in the date of birth recorded in the service record and also in the Sirdar's Certificate, then the respondents ought to have resorted to the procedure envisaged in the National Coal Wage Agreement III Implementation Instruction No.76 dated 25th April, 1988. Clause A (ii) of Annexure-2 of the Implementation Instruction No.76 deals with Non-matriculates but educated which lays down that "in case of appointees who have pursued studies in recognized educational institution, the date of birth recorded in the School Leaving Certificate, shall be treated as correct date of birth and the same will not be altered under any circumstances." Therefore, since the school leaving certificate (Annexure P-6) shows the age of the petitioner as 01.10.1949, in

case of any doubt about the age, when the respondents came to the conclusion that the age recorded in the service record and the date of birth mentioned in the Sirdar's Certificate are different, they ought to have relied on clause B (i) (b) of Implementation Instruction No.76 which envisages that "Mining Sirdarship Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic". Since there was a dispute about the date of birth of the petitioner as recorded in the Sirdar's Certificate, service excerpts and the school leaving certificate, the correct procedure for the respondents was to refer the matter to the Age Determination Committee as per clause C which lays down that "Age Determination Committee/Medical Board for the above will be constituted by the management, in the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in B (i) (a) or B (i) (b) above, the date of birth recorded in the records of the Company, namely, Form B register, CMPF records and Identity Cards (un-tampered) will be treated as final. Provided that where there is a variation in the age record in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the management for determination of age". Since there is variation in the age recorded in the records i.e. Sirdar's Certificate and excerpts of service of the petitioner, as well as in the school leaving certificate and also in Form B, the respondents ought to have resorted to the procedure as envisaged in clause C of the Implementation Instruction No.76 Annexure-2.

10. In the result, the petitioner's petition is allowed. The respondents are directed to adopt the procedure as per clause C of the Implementation Instruction No.76 Annexure-2 and refer the matter of the petitioner before the Age Determination Committee/Medical Board. If the Age Determination Committee/Medical Board reaches to the conclusion that the birth of year of the petitioner is near to 1949, then he should be allowed to continue in service as per the date of birth of 01.10.1949 and if the Committee/Board reaches to the conclusion that his birth of year is near to 1941, then he should be allowed to continue as per the date of birth recorded in the Sirdar's Certificate. But, till the age is determined by the Committee, the petitioner will continue in service.

Sd/-
L.C. Bhadoo
Judge